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In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1562

LEON BURAS, JR., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, CHEVRON OIL COMPANY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the district court (Pet. App. 12a) is reported at 332 F. Supp. 1017. The opinion of the court of appeals (Pet. App. 58a) is reported at 458 F. 2d 346. The order of the court of appeals denying a petition for rehearing *en banc* with one judge dissenting (Pet. App. 77a) is not reported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 109a) was entered on March 23, 1972. A timely petition for rehearing was denied on December 26, 1972. On March 14, 1973, petitioners' time for filing a petition for a writ of certiorari was extended to May 25, 1973. The petition was filed on May 21, 1973.

QUESTIONS PRESENTED

1. Whether, in attempting to impeach the validity of the United States' title to land deriving from a 1903 patent issued by the State of Louisiana and recorded in the State Land Office, all in strict compliance with Louisiana Act 75 of 1880, petitioners sustained their burden of proof by submitting from the records of the local parish copies of alleged 1898 "patents" which were not issued or recorded in compliance with that Act.

2. Whether, in the circumstances of this case, including the applicability of Louisiana statutes and other law, it was error for the court of appeals to decline to abstain and certify questions of state law to the state courts, particularly where the request was made for the first time on petition for rehearing *en banc* after 17 years of litigation and where the statute involved has been superseded since 1908.

STATUTE INVOLVED

Louisiana Session Law Act 75 of 1880 is set forth in the appendix to the petition at pages 5a-11a.

STATEMENT

This case involves an attempt to impeach the title of the United States to 1,140 acres of land in Plaquemines Parish, Louisiana. The title of the United States derives from patents issued by the State of Louisiana in 1903, concededly in strict accordance with all requirements of Louisiana law (Pet. App. 61a-62a). The source of the opposing claims are alleged "patents" issued in 1898, admittedly not in strict accordance with Louisiana law (Pet. App. 60a-61a). The relevant facts may be summarized as follows:

In the 1880's two friends and brothers-in-law, Octave Barrois and Pierre Leon Buras, commenced hunting and trapping on marsh lands near the mouth of the Mississippi River which then belonged to the United States (Pet. App. 21a-22a). In 1894 Barrois gave to the Register of the Land Office of the State of Louisiana a sum of money, a part of which had been contributed by Buras, for the future purchase of a portion of these lands in the event they were later conveyed to the State, which they were. The Register stole the money and it was never received by the State Treasurer, who was the designated receiver for payments for state lands (Pet. App. 22a-23a, 61a). In 1898 the Register apparently gave to Barrois some fictitious patents for the lands, of which there is no record in the State Land Office (Pet. App. 23a). In 1899 Barrois had these "patents" copied into the conveyance records of Plaquemines Parish, the county in which the lands are located (Pet. App. 22a, 61a). Also in 1899, Barrois conveyed to Pierre Leon Buras a part of these lands, retaining the remainder for himself (Pet. 7). The deed from Barrois to Buras referred to the "patents" as sole source of Barrois' title, expressly excluded warranty of title, and recited as consideration a sum equal to the same amount, per acre, as that paid by Barrois to the dishonest Register (Pet. App. 60a-61a).

In 1900 the Register committed suicide, and it was revealed that he had stolen the money of numerous applicants for state lands. A new Register was appointed (Pet. 7-8). In 1903 Barrois again paid for the lands covered by the 1898 instruments, the money this time reaching the Treasurer, and the

new Register issued to Barrois patents duly entered in the State Land Office records (Pet. App. 61a-62a).

In the same year, Pierre Leon Buras quit his occupancy of these lands and ceased paying taxes thereon (Pet. App. 62a). Also in the same year, after obtaining the genuine patents, Barrois again conveyed most of the lands he had previously conveyed to Pierre Leon Buras, but this time to Augustin Buras by a deed referring to the 1903 patents as the source of his (Barrois') title, and this time warranting title (Pet. App. 25a). It is the lands conveyed by this deed which are in controversy here.

In 1903, Augustin Buras had the 1903 deed from Barrois recorded in Plaquemines Parish and began paying taxes on the lands covered by the deed (Pet. App. 62a). In 1911, Augustin Buras sold the lands conveyed to him by Barrois, and they were eventually purchased by the United States for inclusion in the Delta Migratory Waterfowl Refuge (Pet. 9; Pet. App. 17a-20a). The United States and its predecessors in interest have exercised acts of ownership with respect to the lands continuously since 1903.

In 1949, the United States granted oil and gas leases on the lands to Frank J. Lobrano and Allen L. Lobrano (Pet. 11-12; Pet. App. 59a-60a). Chevron Oil Company acquired the operating rights under these leases. In 1950 and 1951, Chevron drilled eight productive oil wells on the lands, and production has been continuous since then (Pet. App. 60a).

In 1954, shortly after the discovery of oil on the lands, petitioners herein brought suit in a Louisiana state court asserting title to the lands in contro-

versy as the heirs of Pierre Leon Buras, and seeking the eviction of the mineral lessees. The United States was not named as a defendant. In 1955, the United States instituted this action in the United States District Court for the Eastern District of Louisiana to quiet its title to the lands in question, joining Chevron and the Lobranos as nominal defendants (Pet. 14; Pet. App. 59a).

Petitioners requested and received a jury trial. At the trial, the originals of the 1898 documents having been lost, petitioners sought to prove these "patents" by certified copies of the 1899 Plaquemines Parish records, which under a Louisiana statute (La. R.S. 13:3726 (1950)) were "entitled to the same credit as the original[s]" (Pet. App. 66a). In response to an interrogatory, the jury found that it could not say whether the Governor had in fact signed the 1898 originals (Pet. App. 73a, 97a).

After a district court decision in favor of petitioners, the court of appeals reversed, holding that the United States has perfect record title, and that the Buras heirs (a) had failed to meet their burden of proving their title, and (b) did not obtain an after-acquired title under the deed expressly excluding warranty (Pet. App. 58a-76a).

Petitioners then sought a rehearing *en banc,* asking that the judgment of the district court be affirmed, or in the alternative—and for the first time—that the questions of state law involved be certified to the Louisiana Supreme Court. The petition was denied 14 to 1, with Chief Judge Brown voting to grant a rehearing to enable the court to order certification (Pet. App. 77a-91a).

ARGUMENT

1. As the court of appeals held (Pet. App. 65a), the United States has perfect record title stemming from the 1903 patents which are valid on their face and issued in strict compliance with Louisiana law, particularly Act 75 of 1880 which required payment by the purchaser to the State Treasurer and recording in the State Land Office. As the court also held (Pet. App. 67a), "the requirements for obtaining a valid patent, as stated by Act 75 of 1880, simply were not followed" with respect to the alleged 1898 "patents." Consequently, petitioners did not meet their burden of overcoming the validity of the 1903 patents and the resultant title of the United States.

This result comports fully with this Court's decision in *United States* v. *Castro*, 24 How. 346, 349-350, where it is stated:

> Whenever * * * a party claims title to lands in California under a Mexican grant, the general rule is that the grant must be found in the proper office among the public archives; this is the highest and best evidence.

The Court there further pointed out (*id.* at 350):

> * * * if what purports to be a grant is produced by the party from some private receptacle, and the handwriting of the official signatures proved by witnesses, and even proved to have been executed when it bears date, it is but parol testimony, open to doubt, since its authenticity depends upon the truth or falsehood of the witnesses, instead of resting upon the certainty of the public records of the nation.

And in *United States* v. *Vallejo,* 1 Black 541, 554-555, this Court emphasized the particular importance of this principle with respect to conveyances of the public domain, as follows:

> * * * It was well said, in *The United States* vs. *Sutter,* (21 How., 175,) that "in every well-regulated Government the deeds of its officers, conveying parts of the public domain, are registered or enrolled, to furnish permanent evidence to its grantees of the origin of their title." An exemplification of such a record is admissible as evidence of the same dignity as of the grant itself. ([*Patterson* v. *Winn*] 5 Peters, 233; [*United States* v. *Davenport's Heirs*] 15 How., 1.)
>
> This rule exists in States which have adopted the civil law. In those States the deed is preserved in the archives, and copies are given as authentic acts—that is, acts which have a certain and accredited authority and merit confidence. The Acts thus preserved are public instruments, and all doubts that arise upon the copies that may be delivered are resolved by a reference to the protocol from which the copies are taken, and without which they have no authority.
>
> We add, it is important, also, that a record should be made of these grants, so that the Government may be advised in respect to the portions of the public domain that have been sold or disposed of, and as a security against the frauds of the public officers upon whom the power of making the grants has been conferred. * * *
>
> Without this guard, the officers making the grants, as, in the present instance, the Governor and Secretary, would be enabled to carry with them

> in their travels blank forms, and dispose of the public domain at will, leaving the government without the means of information on the subject till the grant is produced from the pocket of the grantee.

In *United States* v. *Schurz,* 102 U.S. 378, 402-403, this Court again set forth the importance of compliance with the laws respecting grants from a sovereign:

> * * * in all nations, as far as we know, where grants of the property of the government or of the crown are made by written instruments, provision is made for a record of these instruments in some public government office. Our experience in regard to Mexican, Spanish, and French grants of parts of the public domain purchased by us from those governments teaches us that such is the uniform law of those countries. We have already shown that under the English law all letters-patent are enrolled, and that this is the last act in the process of issuing a patent which is essential to its validity.
>
> We are safe in saying that every State of the Union has similar provisions in reference to its grants of land, and it has been the effort of most of them to compel public record of all conveyances of land by individuals or corporations.

The relevant Louisiana decisions entirely corroborate this Court's statement that the law of all States, including Louisiana, is to the same effect. *Chalmers* v. *Frost-Johnson Lumber Co.,* 143 La. 836, 79 So. 424; *Ellis* v. *Louisiana Planting Co.,* 146 La. 652, 83 So. 885.

Consequently, the court of appeals correctly held (Pet. App. 72a):

> We adopt a similar approach in holding that the grantee, Barrois, never was invested with title due to his failure to comply with the governing Act in force at that time.

In all of the circumstances here the court of appeals was correct in concluding that petitioners' sole proof, the copies of the entries in the Plaquemines Parish records (Pet. App. 64a),[1] was insufficient to overcome the perfect record title of the United States.

It is enough to say of petitioners' claim under the after-acquired title doctrine that the court of appeals correctly relied on its prior *en banc* decision in *Butler* v. *Bazemore*, 303 F. 2d 188, in holding that the doctrine applies only to a vendee holding by warranty deed, and the conveyance from Octave Barrois to Pierre Leon Buras expressly excluded warranty.

Moreover, the foregoing issues of Louisiana law do not warrant further review by this Court.

2. This case does not present a situation where it would be appropriate for a federal court to abstain from determining a question of state law and certifying the question to a state court for determination. It is *a fortiori* not a case in which it was plain error for the courts below to fail to abstain *sua sponte*—which is the precise question here. The question of abstention was raised for the first time in the petition for rehearing *en banc* after some 17 years of litigation, and no contention is made that the denial of rehearing was in itself reversible error.

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[1] The court noted that La. R.S. 13:3726, allowing such copies into evidence, specifically provides for "attack on the genuineness of that which they purport to be copies of * * *" (Pet. App. 64a).

This Court has held that only in exceptional circumstances should a federal court, if its jurisdiction is properly invoked, abstain from deciding questions of state law necessary to the rendition of a judgment. *Allegheny County* v. *Mashuda Co.*, 360 U.S. 185; *Meredith* v. *Winter Haven*, 320 U.S. 228. The exceptional circumstances have been defined in two categories: (1) the possibility of avoiding a constitutional question through construction of an ambiguous state statute (*Lake Carriers' Assn.* v. *MacMullan*, 406 U.S. 498; *Leiter Minerals, Inc.* v. *United States*, 352 U.S. 220;[2] *Railroad Comm'n* v. *Pullman Co.*, 312 U.S. 496); and (2) the existence of a relevant but ambiguous question of local law involving a state regulatory system of vital interest to the State (*Kaiser Steel Corp.* v. *W. S. Ranch Co.*, 391 U.S. 593; *Burford* v. *Sun Oil Co.*, 319 U.S. 315). The circumstances here fit neither category.

There is no federal constitutional question presented in the petition, and there certainly is none that might be avoided by construction of an ambiguous state statute. Indeed, no ambiguous state statute is involved. No one suggests that Act 75 of 1880 is ambiguous. Nor is it disputed that the 1903 patents were issued in strict compliance with it and that the alleged 1898 "patents" were not so issued. And the after-acquired title doctrine does not present a significant question of ambiguous local law.[3]

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[2] But see *United States* v. *Little Lake Misere Land Co.*, No. 71-1459, decided June 18, 1973.

[3] The State of Louisiana did not question that portion of the decision in its *amicus* brief supporting a rehearing *en banc* (Pet. App. 121a).

Similarly, no scheme of state regulation dependent on the nuances of local law is present nor is there any large countervailing interest of the State involved. The decision below deals with an unusual factual situation and does not place titles to large amounts of land in jeopardy. Patents issued under Act 75 of 1880, signed by the Governor and recorded in the State Land Office, have since 1918 been protected from attack for technical defects by the six-year statute of limitation of La. R.S. 9:5661 (1950). Equally importantly, Act 75 of 1880 was superseded by La. R.S. 41:131-136 (1950), and Louisiana state lands since that time have been disposed of by a procedure different from that passed upon by the court of appeals.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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